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Attorney for Revivify, LLC

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:

THRIVIFY, LLC,

Other names used by debtor: The Lodge in
Sisters, LLC, The Lodge in Sisters, ABN,

Debtor.

Bankruptcy Case No. 23-30538-dwh11

**ANSWER AND CONSENT TO
ORDER FOR RELIEF**

The alleged debtor, Thrivify, LLC (the “**Alleged Debtor**”), by and through its manager, Revivify, LLC (“**Revivify**”), hereby submits this Answer and Consent to Order for Relief and explanatory response to the involuntary bankruptcy petition (the “**Involuntary Petition**”) filed by three petitioning creditors (the “**Blackburn Parties**”)¹ on March 15, 2023. (Dkt. 1).

The Alleged Debtor owns a senior assisted living facility called The Lodge at Sisters located in Sisters, Oregon. Prior to the Involuntary Petition, the Alleged Debtor was at the center of active state court litigation among its members (the “**Litigation**”),² brought by two companies owned and controlled by the Blackburn Parties – Thrive 1967, LLC and Thrive 1969, LLC – (the “**Blackburn LLCs**”), as well as a

¹ The petitioning creditors are Terrence C. “Chris” Blackburn, his brother Sean A. Blackburn, and Clutch Industries, Inc., owned by Chris Blackburn. As noted below, the petitioning creditors own and control two of the members of the Alleged Debtor.

² The Litigation was proceeding in the Circuit Court for the State of Oregon for the County of Deschutes, Case No. 20CV43982.

third member, TDLS, LLC.³ The Blackburn LLCs leveled an array of allegations against Revivify and sought broad relief, including removal of Revivify as manager. Revivify believes the allegations are baseless.

After over a year of litigating, on March 14, 2022, the litigants found *a moment of agreement* during which they consented to the entry of the Stipulated Order Appointing Receiver (the “**Stipulated Order**”), appointing SAK Oregon, LLC to serve as receiver (the “**Receiver**”). The Stipulated Order did not terminate Revivify as manager. Instead, it vested the Receiver with exclusive authority over the Alleged Debtor during the pendency of the receivership, with the ability to utilize Revivify if the Receiver elected to do so.

Following entry of the Stipulated Order, and notwithstanding their consent to the Stipulated Order, the Blackburn LLCs battled the Receiver at every turn, filing: (1) a motion to remove the Receiver, (2) objections to the Receiver’s chosen counsel, (3) serial objections to the Receiver’s fee notices, (4) a motion to compel discovery from the Receiver, and (6) objections to the Receiver’s motion for authority to conduct a sale process.

In the midst of the discord came *a second moment of agreement* among the litigants. On October 13 and 14, 2022, after weeks of negotiations led by Chris Blackburn, the parties executed a Partner Buyout and Settlement Term Sheet (the “**Term Sheet**”), in which they agreed to a comprehensive resolution of their disputes. The most significant provision in the Term Sheet was that the Blackburn Parties and Blackburn LLCs would purchase Revivify’s interests in the Alleged Debtor for cash and a note and take over responsibility for Revivify’s guaranty of certain Alleged Debtor-related obligations. Had its binding terms been honored and consummated, the Term Sheet would have ended the fighting.

However, Chris Blackburn and the Blackburn LLCs then refused to proceed with the settlement. Revivify brought a motion to enforce the settlement in the state court proceeding. The Blackburn Parties

³ The plaintiffs in the Litigation are members of the Alleged Debtor, including Thrive 1967, LLC and Thrive 1969, LLC, both of which are subsidiaries of Clutch Investments, LLC, an Oregon limited liability company owned and controlled by Sean Blackburn and Chris Blackburn. TDLS, LLC, also a member of the Alleged Debtor, joined the suit.

filed the Involuntary Petition just two days prior to the Blackburn LLC's deadline to respond to Revivify's motion to enforce the settlement. Although unexpected and disruptive, the filing of the Involuntary Petition by the Blackburn Parties could lead to constructive bankruptcy outcomes, including a structured sale process.

In consenting to the state court's appointment of the Receiver, Revivify elected to step aside from its management responsibilities during the Litigation. Now that the Litigation has been set aside by the Petition, Revivify believes it has been restored to its pre-receivership management position and is entitled to act as manager of the Alleged Debtor as debtor in possession. Of course, there is still a question under Section 543 whether the Receiver, as a "custodian" of the Alleged Debtor's property, must turn over the property to the debtor in possession. Revivify believes that question is easily answered: the Receiver should remain in place pending final resolution of the bankruptcy, either as custodian or as chapter 11 trustee.

To be clear: Revivify does not intend to take significant action pursuant to its reinstated management role beyond this Consent. Revivify remains willing to yield to a court-appointed manager while this case proceeds and the disputes among the members are resolved. Specifically, Revivify would support the entry of an order under Section 543(d)(1) excusing compliance with turnover requirements, and an order appointing a chapter 11 trustee. In any event, Revivify supports the Receiver's continuation as a custodian or interim chapter 11 trustee pending the final selection of the chapter 11 trustee by the Office of the United States Trustee.

There is an end in sight. Revivify intends to seek enforcement of the October settlement agreement reflected by the Term Sheet, which, if granted, should end the dispute. Revivify would also support a responsible sale process for the Alleged Debtor's property to be conducted by the Receiver as custodian or by a chapter 11 trustee.

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Revivify requests that the Court set a status conference as soon as possible to discuss scheduling and case management. Revivify looks forward to working with the Court, the Office of the United States Trustee, and other interested parties to bring the members' disputes to a resolution and to address the most appropriate disposition of the property of the estate.

Respectfully submitted.

DATED: March 20, 2023

PERKINS COIE LLP

By: /s/ Douglas R. Pahl

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CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I electronically filed the foregoing **ANSWER AND CONSENT TO ORDER FOR RELIEF** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED: March 20, 2023

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